IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

MACA.No. 787 of 2003()

OPMV.1052/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR

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: APPELLANT/PETITIONER:

JISHU JOHN, S/O. JOHN, AGED 42 YEARS,
KANNAMPUZHA HOUSE, NALUKETTU P.O.,
KORATTY KIZHAKKUMMURI VILLAGE,
TRICHUR DISTRICT.

BY ADV. SRI.C.V.SHAJU
SRI.JESWIN P.VARGHESE

RESPONDENTS: RESPONDENTS:

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1. RAJESH P.P., S/O. PURUSHOTHAMAN,
PERINGOTTUKARAKARAN HOUSE, CHIRAGARA KARA,
KORATTY KIZHAKKUMMURI VILLAGE,
TRICHUR DISTRICT.

2. T.C. SHAJU, S/O. CHAKKU,
THOZHUTHUNGAPARAMBIL HOUSE,
KORATTY EAST P.O., TRICHUR DISTRICT.

3. THE ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE, CITY HEIGHTS BUILDINGS
SOUTH JUNCTION, CHALAKUDY.

BY ADV. SRI.JOSE THETTAYIL
DR.ELIZABETH VARKEY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 787 OF 2003

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Dated this the 22nd day of June, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1052 of 1998 on the file of the Motor Accidents Claims Tribunal, Perumbavoor is the appellant. Petitioner sustained injuries in a road traffic accident on 8.4.1998 involving an Autorikshaw bearing Reg.No.KL-7/J-3409. Petitioner filed the O.P. claiming a compensation of Rs.56,000/- impleading the owner, driver and Insurer of the vehicle. Owner and driver did not appear and contest the case. The Insurer alone contested the case. Tribunal found that the accident occurred due to the negligence of the driver of the Autorikshaw. It also found that the petitioner is entitled to get a compensation of Rs.15,650/-. The third respondent Insurer was directed to pay the amount. Dissatisfied with the quantum of compensation awarded, petitioner has filed this appeal.

2. The findings of the Tribunal that the accident occurred due to the negligence of the driver of the

Autorikshaw and the petitioner is entitled to get compensation have become final and conclusive. The finding that the Insurer is liable to pay that amount has also become final and conclusive. So the only question arising for consideration is whether the appellant is entitled to get any further amount towards compensation.

3. The accident occurred on 8.4.1998. Evidence in the case shows that petitioner sustained dislocation of his right shoulder, contusion, abrasion left hip, left leg. The case of the appellant was that because of the accident there is a tendency of repeated dislocation. Exhibit A9 is the certificate issued by the Doctor, who was examined as P.W.2. He deposed that appellant has a tendency for recurrent dislocation. So the appellant sustained injuries of serious nature is proved in this case. Tribunal has awarded only Rs.550/- towards compensation for treatment expenses. Considering the fact that the appellant was treated in a private hospital I am of the view that the Tribunal ought to have awarded at least Rs.4,500/- more towards treatment expenses. It is to be noted that dislocation would occur

again and appellant has to undergo treatment. Tribunal has awarded only Rs.5,000/- towards compensation for loss of amenities. Considering all aspects, I am of the view that the Tribunal ought to have awarded Rs.5,000/- more under that count. But I do not find any reason to interfere with the quantum of compensation awarded under other heads.

4. Learned counsel for the third respondent-Insurer has strenuously argued before me that the appellant was a passenger in an Autorikshaw and he is not entitled to get any amount since the Insurer is not liable to indemnify the insured. No such contention was taken by the Insurer before the Tribunal. Copy of the Policy was not produced. Further, the Tribunal had already found that the Insurer is liable to pay the amount. That finding has become final and conclusive and the same will operate as res judicata. So the Insurer is liable to pay the compensation awarded by the Tribunal.

In the result, the appeal is allowed in part. An award is passed in favour of the appellant allowing him to recover an additional compensation of Rs.9,500/- with 7% per annum from the date of petition till date of realisation. The

respondent-Insurer is directed to pay that amount also. As and when amount is deposited, the appellant can withdraw the whole amount.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A.

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J U D G M E N T

22ND JUNE, 2007